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should be abolished. Universal suffrage should be established throughout the Union for federal elections, and the Congress should have exclusive control thereof. Congressmen should be elected in each state at large on a general ticket, half of them in such a manner as to represent the dominant economic group within the state. He approves an executive budget system, but his panacea is responsible cabinet government upon the model of the British parliamentary system.

Dr. MacDonald gives little consideration to the probable operation of the constitutional changes which he proposes. His plan for occupational representation would mainly tend to increase the representation of the farmers in the Congress of the United States. As this is already the most influential class in national politics, it is difficult to guess what he expects to gain by such a measure. His plan for the liberation of parties from legal control would mainly tend to restore the conditions that prevailed before the introduction of the direct primary. The introduction of cabinet government in the traditional British form would tend to bring about in this country the very conditions from which radical political reformers abroad are trying to escape. In short, if Dr. MacDonald did not enjoy a hard-won reputation as a forward-looking publicist, and could be judged only by this volume, it would be necessary to put him down as an apostle of reaction.

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Le Gouvernement par les Juges et la Lutte contre la Législation Sociale aux Etats-Unis. By EDOUARD LAMBERT. (Paris: Marcel Giard & Cie. 1921. Pp. 276.)

Few, if any, Americans have analyzed their judiciary from the standpoint of its control over legislation so thoroughly as Professor Lambert of the University of Lyons has done. His analysis is supported by references to and quotations from opinions of the Supreme Court and of some state courts, the *Congressional Record*, bulletins of the bureau of labor statistics, technical legal works such as Wigmore's *Evidence*, almost all monographs and other books dealing with any of the phases of judicial supremacy, reports of bar associations, numerous articles in all the leading American law journals, in the political science and economic reviews, and in some more popular American magazines. *Le Gouvernement par les Juges* is, however, much more than a digest of this mass of material. As an impartial observer, trained by the study

of comparative law, Professor Lambert is struck by the peculiarities of the legal system to which Americans have become accustomed. His conclusions are therefore worth noting even though he seems chiefly intent on pointing out to his own countrymen what may be expected if their courts, at the behest of Charles Benoist, Jules Roche and others, follow the American example. Some recent decisions of French courts are indeed approaching American practice by interpreting legislation to conform with the individualistic principles of the *Code civil*. A second purpose is to point out to French students of comparative legislation that "the American statute is always an incomplete and sometimes a false expression of juridical reality," a fact that some seem to have overlooked.

The inferior position of the American statute is due, primarily, to the extension during the last twenty-five or thirty years of judicial control over the constitutionality of laws. Prior to 1883, approximately, judicial control extended only to legislative competence over certain subjects and not at all to the manner in which the legislature exercised its right. Willoughby's *Constitutional Law* and Bryce's *American Commonwealth* describe the judiciary as it functioned in this early period. Since 1883, judicial control has been extended under cover of the bill of rights and the Fourteenth Amendment. By the opening of the twentieth century the American judiciary has been able to exercise constant supervision over legislation. This supervision has been aided by the development of two criteria, "reasonableness" and "expediency," representing opposing tendencies. The one is used to keep statute law within the bounds of common law, the natural, hence reasonable law. The other is used when the court is willing to permit a modification of the common law.

Social legislation furnishes the best field for studying judicial supremacy. Acts forbidding wage payments in store orders and workmen's compensation acts were among the laws declared beyond the power of legislatures to enact until long after European governments had adopted similar measures. The supposedly more progressive attitude of the United States Supreme Court is largely delusive. In general the decisions of the judges as to the constitutionality of social legislation are "dominated by their mental attitudes or by their predilections based on heredity, environment and education, as are the verdicts of all other juries." Realization of this power possessed by the courts is held largely responsible for the persistence of the popular election of judges in the states. The recall of judges and of decisions will afford little or no relief from judicial supremacy.

Recent discussions lead Professor Lambert to consider the view, at first incomprehensible to one accustomed to parliamentary government, that there are limitations on the amending power which the courts can enforce. If, for instance, an amendment took from the courts the determination of what constitutes "due process" or subordinated the judiciary to the legislature, Professor Lambert predicts it would be declared invalid by the courts. The court's opinion in *Rhode Island v. Palmer* asserts "a right as much of construction as of constitutional control over amendments" and demonstrates that, "if thus far the court has exercised its control only as to the regularity of the amending process, it has never renounced the extension, the case arising, to the verification of the legality of their contents." The recent decisions of the supreme court of Colorado (*People v. Max*, 198 Pac. 150. Also, *People v. Western Union*, 198 Pac. 146) invalidating the recall of judicial decisions amendment were probably rendered too late to furnish additional support for Lambert's conclusion. Another possible extension of judicial authority which is taken up is the control over treaty-making.

The second reason for the inferior position of the American statute is that American courts have broader powers of construction than French or even English courts have, because this power is associated with that of declaring acts invalid. The power of construction is aptly illustrated by a detailed review of the Supreme Court's treatment of the Sherman and Clayton Acts. A third reason for the American statute's inferiority is attributed to the influence of legal education, particularly the case-method of teaching law.

Finally, three palliatives for judicial review are considered: advisory opinions, declaratory judgments and administrative application of statutes. The first would be an improvement, but is rendered practically impossible by strongly established traditions. The doubtful success of the second would decrease neither the lack of coördination nor the instability of judge-made law. It would only increase the undesirable element of subjectivism. Little can be hoped for from the third, as long as administrative tribunals have to work under the supervision of the courts. Before administrative justice can aspire to supplant the justice of the courts it must become its equal. There is a long road to travel before this will be attained. The examination of the three palliatives is concluded with this remark: "After having encircled the judicial stronghold looking for fissures, I ask myself how the adversaries of this system of government can, without departing from

constitutional methods, secure its overthrow except by slipping in as defenders of the stronghold in order to open to their companions in arms the only practicable entrance—that which is barred by control over the constitutionality of the laws.”

Dealing with such a mass of material in a foreign language, minor errors in citations, in names of writers and titles of their works are to be expected. Perhaps the most serious error appears on the first page where the Godcharles case is referred to as having been decided in the supreme court of Massachusetts, though the footnote correctly cites the Pennsylvania state reports. Barnard's monograph, there incorrectly referred to as in the Johns Hopkins *Studies*, is correctly cited on page 69. There is no index. The book is admirably written in the inimitable style which is so characteristically French.

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Le Vote des Femmes. By JOSEPH-BARTHÉLEMY. (Paris, F. Alcan, 1920. Pp. xi, 618.)

This brilliantly argued case for the enfranchisement of French women, presented in a book which has been crowned by l'Académie des Sciences Morales et Politiques, is the outcome of the author's lectures at the École des Sciences Politiques.

He surveys with clearness and enthusiasm considerations that have long been familiar ground in the literature of equal suffrage. All the theoretical pros and cons, which have already come to have a merely academic interest in this country, are reviewed. The right to vote is found to be derived from the principles of democratic representation, upon which modern public law is founded. The suffrage is further declared to be an instrument for defending interests. Women have interests to defend, for, in spite of the modifications which have been made in the Napoleonic Code, the French law leaves women in a position of marked inferiority. Less is spent on their education; they may not serve on a jury or witness a birth certificate; in marriage, domicile and nationality are determined by the husband; the mother has nothing to say legally as to the education or religion of her children. Moreover, the seven and one-half million wage-earning women in France need the vote to repeal the masculine laws prohibiting them from entering public work and the professions. They need the vote to secure a living wage.